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No. 94-1592

In the Supreme Court of the United States

OCTOBER TERM, 1994

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL.,
PETITIONERS

v.

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.,
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

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QUESTIONS PRESENTED

Whether time spent by members of a train crew waiting for transportation to their point of final release is counted as "time on duty" under the Hours of Service Act, Pub. L. No. 103-272, sec. 1D, 108 Stat. 887, to be codified at 49 U.S.C. 21101 *et seq.*

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OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-20a) is reported at 44 F.3d 437. The opinion of the court of appeals panel (Pet. App. 21a-28a) is reported at 29 F.3d 324.

JURISDICTION

The judgment of the court of appeals, following its en banc rehearing, was entered on December 29, 1994. The petition for a writ of certiorari was filed on

March 28, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Hours of Service Act (HSA)[1] is designed to foster railroad safety by limiting the number of consecutive hours that any member of a train crew may remain on duty and by requiring specified amounts of off-duty time before such workers may return to duty. Thus, except in emergencies,

> a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty —
>
> (1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or
>
> (2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.

49 U.S.C. 21103(a) (App., *infra*, 2a-3a). The present case concerns the appropriate treatment of time spent waiting for "deadhead transportation" at the conclusion of an employee's period of service.[2] Such waiting time may occur when a train crew "expires" —*i.e.*, reaches the end of the time period during which it may remain on duty—before the train and crew reach their scheduled destination. In such instances, the statute requires that the crew cease operating the train, so it must be stopped. The crew may then be required to wait, either on the train or elsewhere, for the arrival of a relief crew and for a means of transportation to the point of the expired crew's final release. See Pet. App. 3a.

As originally enacted in 1907, and continuing until its amendment in 1969, the Hours of Service Act implicitly divided all employee time into two categories —"on duty" or "off duty"—yet provided no express statutory definition of either term. See 45 U.S.C. 61 (1964). Early decisions held as a general matter that interim periods of idleness at the work site during which employees awaited further instructions were properly regarded as "on duty" time, but that time spent in deadhead transportation, both to and from the work site, was time "off duty." See, *e.g.*, *Missouri*,

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[1] At the time this suit was commenced, the Hours of Service Act was codified at 45 U.S.C. 61 *et seq.* (Supp. V 1993). During the pendency of the present action, Congress repealed the HSA, as part of a broad recodification of federal transportation laws. See Act of July 5, 1994, Pub. L. No. 103-272, 108 Stat. 745. The repeals effected by the recodification do not apply, however, to "proceedings that were begun before the date of enactment of this Act." § 7(b), 108 Stat. 1379. Moreover, Congress made clear that the recodification is intended to effect no substantive changes in the affected laws, although it alters their arrangement and language in certain respects. See § 6(a), 108 Stat. 1378; H.R. Rep. No. 180, 103d Cong., 1st Sess. 1-5 (1993). The provisions of the HSA are to be codified chiefly in Chapter 211 of Title 49, United States Code. 49 U.S.C. 21101-21108. Other HSA provisions are to be codified at 49 U.S.C. 20102, 21303, and 21304. The provision of pivotal importance to the present action—45 U.S.C. 61(b)(3) (1988), which defined "time on duty"—are to be codified at 49 U.S.C. 21103(b). Sections 21101-21107 and 21303 are reproduced as an appendix to this brief. We will refer herein (as petitioners have) to the pertinent provisions as recodified.

[2] "Deadhead transportation" is transportation to or from a duty assignment, not including normal commuting time.

Kansas & Texas Ry. v. *United States*, 231 U.S. 112, 119 (1913); *United States* v. *Great Northern Ry.*, 285 F. 152 (9th Cir. 1922). There appears, however, to have been no clearly established answer to the question now at issue, regarding the proper characterization of time spent waiting for deadhead transportation. Although the railroads in the proceedings below offered anecdotal evidence that such time was treated as "off duty" time during that period (C.A. App. 68-69), the only reported judicial decision addressing the issue concluded that such waiting time should be considered time on duty. See *United States* v. *Pennsylvania R.R.*, 275 F. Supp. 345 (W.D. Pa. 1967).

Congress substantially amended the HSA in 1969, reducing the number of permissible hours on duty and providing, for the first time, a definition of "on duty" time. See 45 U.S.C. 61(b)(3) (1988). Congress dealt specifically with the issue of deadhead transportation time, adopting a compromise position between those advocated by union and industry groups. By virtue of that amendment, the statute in its current form provides that "[t]ime spent in deadhead transportation *to* a duty assignment is time on duty." 49 U.S.C. 21103(b)(4) (App., *infra*, 3a) (emphasis added). The statute further provides that "time spent in deadhead transportation *from* a duty assignment to the place of final release is neither time on duty nor time off duty." *Ibid.* (emphasis added). This provision effectively creates a third category of time, commonly known as "limbo time." Limbo time does not count as on-duty time subject to the specified statutory maximum of on-duty hours during any one period of service, but it also does not count toward the statutory minimum of off-duty rest time that a crew member must be given prior to the beginning of the

next period of service. See Pet. App. 3a-4a. The 1969 amendments did not expressly state, however, whether time spent waiting for deadhead transportation from a duty assignment should also be treated as limbo time.

Subsequent to the 1969 amendments, and continuing until 1992, the Federal Railroad Administration (FRA) in the Department of Transportation took the position that, when a crew member is relieved of all responsibilities but is required to await the arrival of deadhead transportation to his or her point of final release, the time spent waiting should be considered limbo time. See Pet. App. 34a-41a (Letter from FRA Assistant Chief Counsel Gregory B. McBride to counsel for the present petitioners (Aug. 4, 1989)). The FRA took the position that such waiting time "most closely resembles, and is part and parcel of, deadheading from duty." *Id.* at 35a. As the FRA explained, such time cannot be considered off-duty time, because it does not afford a true opportunity for rest; yet there is little or no safety rationale for considering such time to be part of time on duty, as long as the crew member has no duties to perform. *Id.* at 37a. At the same time, however, the FRA made clear that the time spent waiting would be considered time on duty if the crew member was required to perform any service for the railroad. *Id.* at 37a-40a.

2. In 1990, petitioners United Transportation Union (UTU) and Brotherhood of Locomotive Engineers (BLE) filed lawsuits challenging the FRA's interpretation of the HSA on this issue. On appeal, the Ninth Circuit consolidated the two cases for decision, which it rendered in September 1992. *United Transportation Union* v. *Skinner*, 975 F.2d 1421 (1992) (*UTU*). The Ninth Circuit ruled in *UTU* that

the waiting time at issue must be counted as "time on duty" under the statute, concluding that it was "clear" that this result obtained prior to the 1969 HSA amendments and that those amendments evinced no congressional intent to alter the law on this point. See *id.* at 1426-1427. The court of appeals took note of the "contingent responsibilities" that crew members awaiting deadhead transportation may face, in that they "may be required to provide certain additional services for the railroad, should the need for any of those services arise." *Id.* at 1423, 1428.

The government did not seek review in this Court of the *UTU* decision, which was the first appellate ruling on the issue. The FRA, however, undertook to reevaluate its approach to the question, and the agency determined that it would apply the Ninth Circuit's interpretation of the statute on a nationwide basis. That shift in policy was announced in an October 28, 1992, letter from FRA Chief Counsel Mark Lindsey to Robert W. Blanchette, Vice President of the Association of American Railroads (C.A. App. 1-3), and was later explained in a notice published in the Federal Register. 58 Fed. Reg. 18,163 (1993).

In the Federal Register notice, the FRA stated that it did not agree with the legal rationale of the Ninth Circuit. See 58 Fed. Reg. 18,164 (1993). The FRA recognized, however, that the language of the statute does not provide an unambiguous characterization of time spent awaiting deadhead transportation, and that "the issue has always been a close one." *Ibid.* The FRA noted that application of the stricter interpretation could contribute to rail safety, insofar as it may reduce the number of lengthy waits for deadhead transportation, which in turn can contribute to the problem of cumulative fatigue from irregular

work schedules. *Ibid.* The FRA also noted that its experience in Oregon (where an injunction mandating the stricter approach had been in effect for more than a year) had allayed any concerns that this approach might induce railroads to keep "expired" crews working beyond the statutory limit, thereby disserving the safety purposes of the Act. *Ibid.* As the FRA has subsequently made clear, however, its primary rationale for adopting the Ninth Circuit's interpretation was simply to ensure "uniform application of the Act" to railroads operating in various parts of the nation. *Ibid.*; see Pet. App. 30a.

3. In 1993, nine major railroads initiated the present action, seeking direct review in the Seventh Circuit of the FRA's new policy, as announced in the Federal Register notice and in two other communications.[3] Initially, a divided panel of that court upheld the FRA's action. Pet. App. 21a-28a. The panel majority agreed that the agency's position was "reasonable and based on a permissible construction of the HSA" and stated that it "would be hard pressed to say that an agency's reliance upon the opinion of a Circuit Court of Appeals is unreasonable." *Id.* at 26a. One judge dissented, concluding that the agency's

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[3] The respondent railroads filed separate petitions for review of the Federal Register notice, an earlier FRA memorandum stating the agency's position on the issue, and the FRA's subsequent letter denying the railroads' Petition for Inter-pretation of the Hours of Service Act, which the FRA treated as a petition for rulemaking. See C.A. App. 13-17. The Seventh Circuit consolidated the three petitions and, in its en banc opinion, ruled that the FRA's interpretation constitutes "final agency action[]" reviewable under 28 U.S.C. 2342(7) (Supp. V 1993). Pet. App. 5a-6a.

revised interpretation of the statute was not reasonable. *Id.* at 27a-28a.

The respondent railroads sought rehearing en banc, which the court of appeals granted. Following reargument, the en banc court unanimously ruled in the railroads' favor. The majority of the en banc court concluded, as a preliminary matter, that the FRA's position was not entitled to substantial deference, in light of the history of the agency's treatment of the issue, including the purported inconsistency of the FRA's legal positions. Pet. App. 7a-10a. The majority went on to hold that, in any event, "the statute itself resolves this issue quite clearly." *Id.* at 10a. The majority observed that under the statute, time spent in deadhead transportation from a duty assignnent to the point of final release is not treated as time on duty (because fatigue at this point poses no immediate danger) but is also not treated as time off duty (because it does not afford any genuine opportunity for rest). *Id.* at 12a. The majority concluded that the time spent awaiting the arrival of deadhead transportation after the completion of operating responsibilities should similarly be counted as "limbo time," under the present statutory scheme, because the very same considerations apply to it. *Ibid.*

Three concurring judges took issue with the majority's comments about the FRA's purported inconsistency, noting that the agency had in fact adhered consistently to two distinct principles: (1) that the preferable interpretation of the statute is to treat the sort of waiting time at issue here as limbo time; and (2) that there is a substantial need for national uniformity in applying the statute, "given the integrated nature of the national railroad

system." Pet. App. 17a. The concurring judges concluded, however, that the FRA's decision to favor the value of uniformity (and accordingly to acquiesce in the Ninth Circuit's ruling in *UTU*) was not the sort of agency decision to which a court owes deference. *Id.* at 19a-20a.

4. In light of the en banc decision in the present case, the FRA has again reevaluated its position on this issue. In a March 1, 1995, letter to Robert W. Blanchette of the Association of American Railroads, FRA Chief Counsel Mark Lindsey indicated that in all parts of the nation outside the Ninth Circuit, the FRA would now revert to its original view that time spent awaiting deadhead transportation at the conclusion of an employee's period of service would be treated as limbo time. Pet. App. 29a-33a. The Chief Counsel's letter pointed out that the FRA had "adopted the Ninth Circuit's interpretation primarily to achieve national uniformity," but that the Seventh Circuit's ruling "has now made this goal impossible to achieve unless and until the United States Supreme Court resolves the split between the circuit courts." *Id.* at 30a. Accordingly, the FRA indicated that, outside the Ninth Circuit, it would follow its original view that time during which an employee is "merely required to remain on a train" awaiting deadhead transportation "most closely resembles, and is part and parcel of, deadheading from duty," and would therefore be counted as limbo time. *Id.* at 31a. At the same time, the FRA emphasized—consistent with its earlier pronouncements on this point—that, "if an employee is required to perform service of any kind during that period, * * * he or she will be considered as on duty until all such service is completed." *Ibid.* While expressing hope

that action by this Court would ultimately permit uniform application of the law, the FRA also indicated that it would continue, in the meantime, to adhere to the Ninth Circuit's ruling within the States constituting that circuit. *Id.* at 32a.

ARGUMENT

The result reached by the court of appeals represents the correct resolution of an admittedly difficult question of statutory interpretation. At the same time, however, the decision below creates a square conflict with the earlier decision of the Ninth Circuit in *United Transportation Union* v. *Skinner*, 975 F.2d 1421 (1992) (*UTU*). In order to resolve that conflict, and to permit evenhanded application of the Hours of Service Act to railroads operating in various parts of the country, this Court should grant the petition for a writ of certiorari.

1. The Hours of Service Act is a federal regulatory statute that restricts the manner in which railroad operations may be conducted and provides for substantial penalties (see 49 U.S.C. 21303 (App., *infra*, 9a-11a)) in the event that railroads do not comply with those restrictions.[4] Resolution of the statutory issue posed by this case will have substantial effects on railroad operations, with implications both for the

[4] The Secretary of Transportation may impose a civil penalty of "at least $500 but not more than $10,000" for each violation of the Act. 49 U.S.C. 21303(a)(2) (App., *infra*, 9a). A penalty of up to $20,000 may be imposed when a grossly negligent violation or a pattern of repeated violations causes an imminent hazard of death or injury, or actually results in death or injury. *Ibid.* Civil penalties may be collected through actions brought by the Attorney General in federal district court. 49 U.S.C. 21303(b) (App., *infra*, 9a-10a).

costs that may be imposed on railroads and for rail safety. Because weather and equipment problems (along with serving the needs of railroad customers) can make exact planning difficult, the current disuniformity imposes significant additional uncertainty and costs upon railroads attempting to determine how crews are to be utilized.

For example, a weather-related delay may cause a train crew to expire within the Ninth Circuit rather than (as anticipated) after crossing the circuit boundary. The time spent waiting for the arrival of the deadhead vehicle would then be deemed on-duty time, and the railroad would face the possibility of severe civil penalties. To avoid the risk of penalties, the railroad might even be tempted to order the crew (whether explicitly or implicitly) to "cut corners" on railroad safety (*e.g.*, by operating at an excessive rate of speed) in order to exit the Ninth Circuit before the 12-hour limit was reached. Uniform application of this regulatory scheme to railroads operating in various parts of the country—and whose operations (and crews) cross circuit lines—is therefore highly desirable, both for the sake of fairness among railroads and to prevent confusion on the part of workers and managers regarding the requirements of the law. In light of the square conflict between the decisions of the Seventh and Ninth Circuits on this issue, resolution of the conflict by this Court is the only apparent way in which such uniformity can be achieved.[5]

[5] As petitioners' Supplemental Brief in Support of Petition for Certiorari points out, this issue has already spawned additional court of appeals litigation. Four of the railroad respondents in this case have filed a petition for review in the United

This case presents an appropriate occasion for resolution of the circuit conflict. The legal issue is purely a matter of statutory interpretation. In this connection, we wish at the outset to dispel the confusion that might otherwise be engendered by petitioners' presentation. Petitioners assert that during the sort of waiting time at issue here, crew members "typically" remain responsible for a variety of tasks, such as "protect[ing] the train against vandalism" and "assur[ing] that the brakes remain properly applied." Pet. 5-6. Respondent railroads, by contrast, have denied that operating responsibilities are regularly imposed on crew members awaiting the arrival of deadhead transportation to their point of final release. See C.A. Br. 21, 39; C.A. Supp. App. 71-72, 88.

In our view, however, that factual disagreement as to the frequency with which such crew members may be assigned various responsibilities is irrelevant to the legal question posed here. The FRA has consistently taken the position that *if* crew members

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States Court of Appeals for the District of Columbia Circuit, challenging the FRA's March 1, 1995, announcement that it will continue to abide by the *UTU* decision within the Ninth Circuit while treating the time in question as limbo time in the rest of the country. See pages 9-10, *supra*. Relying on *United States* v. *Stauffer Chemical Co.*, 464 U.S. 164, 169-172 (1984), the railroads contend that under the doctrine of mutual collateral estoppel, the FRA is required, with respect to railroads that were parties to the instant litigation, to abide by the Seventh Circuit's decision even within the Ninth Circuit. See Supp. Br. The continued litigation concerning this question is evidence both of the significance of the issue to the private parties involved and of the likelihood of wasteful and duplicative proceedings in the lower courts absent a definitive resolution by this Court.

awaiting deadhead transportation are assigned *any* duties to perform while waiting—even fairly passive duties such as "observing passing trains for any defects or unsafe condition"—then they will be considered to be on duty. See Pet. App. 39a-40a, 31a-32a. Accordingly, the only question presented in either the instant case or the *UTU* litigation has concerned the proper characterization of waiting time if additional duties are *not* actually imposed on crew members. The Ninth Circuit concluded that such crew members are nevertheless on duty, apparently on the theory that they are potentially subject to being called into service during the waiting period. See 975 F.2d at 1423-1424, 1428. The Seventh Circuit disagreed with that legal conclusion. See Pet. App. 11a-12a. Thus, the conflict between the courts of appeals concerns a purely legal issue, which this Court can and should resolve.

2. If this Court grants certiorari, the federal respondents will take the position (in accordance with the FRA's letter of March 1, 1995, see Pet. App. 29a-33a) that time spent waiting for deadhead transportation at the conclusion of an employee's period of service is properly regarded as neither on- nor off-duty time. That position, we acknowledge, is not consistent with the position taken by the FRA before the Seventh Circuit, in which the agency argued that the waiting time should be treated as time on duty. As the FRA has explained, however, the agency took that position in the court of appeals not because it was persuaded that this was the better reading of the HSA, but because it concluded (after the Ninth Circuit's decision in the *UTU* litigation) that the interest in nationwide uniformity tipped the balance in favor of accepting the alternative reading of the

statute. Now, however, the combined effect of the rulings of the Ninth and Seventh Circuits is to preclude such uniformity, unless and until this Court resolves the division in circuit authority. And if this Court grants the petition for a writ of certiorari, its resolution of the interpretive question will obviously have nationwide application, superseding the rulings of both the Seventh and the Ninth Circuits. There is consequently no longer any reason for the FRA to defend a construction of the statute that it believes, on the whole, to be the less persuasive.[6]

As both the court below and the FRA have explained, the treatment of the sort of waiting time at issue here as limbo time—neither on duty nor off duty—comports fully with both the statutory scheme and the safety policies that underlie it. Although Congress did not specifically address the issue at hand, its careful compromise regarding deadhead transportation time provides guidance as to the correct result. As long as train crew members are not called upon to perform tasks while they are waiting, such time is analogous to time spent in deadhead transportation to the point of final release, and is best regarded as part of that time. Crew members without

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[6] In light of the FRA's decision to revert to its initial position on the substantive issue presented, the case comes to this Court in a posture significantly different from that in which it arrived in the Seventh Circuit. Questions of deference to the FRA's judgment respecting the propriety of acquiescence for the sake of national uniformity are now largely beside the point. Rather, the sole issue presented for this Court's consideration is the underlying issue of statutory interpretation. The presence as parties of the petitioner unions ensures that the Court will have the benefit of an adversary presentation despite the agency's shift in position.

responsibilities pose no substantial danger even if they are fatigued, whether they are already in a deadhead vehicle or are awaiting the arrival of such a vehicle. In neither event, however, should such time be counted as off-duty time, because crew members cannot be expected to have any genuine opportunity for rest until they have been finally released, at their home base or other designated terminal.

Both the railroads and the unions have attempted in the prior proceedings to draw support from the ostensible treatment of time spent awaiting deadhead transportation during the period before the 1969 HSA amendments. The court of appeals correctly determined that evidence of pre-1969 practice is "unimportant." Pet. App. 12a. Because the pre-1969 statute did not provide for the third category of time (*i.e.*, time that is neither on nor off duty), practice under that statute can have little bearing on whether this new category applies to time spent awaiting deadhead transportation to the point of final release. Nor does the legislative history of the 1969 amendments provide any clear guidance on this point. In short, the statute should simply be interpreted, in accordance with a common sense application of its present language and structure, as treating the sort of waiting time at issue here as part and parcel of "time spent in deadhead transportation from a duty assignment to the place of final release," and hence "neither time on duty nor time off duty." 49 U.S.C. 21103(b)(4) (App., *infra*, 3a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX

CHAPTER 211—HOURS OF SERVICE

§ 21101. Definitions

In this chapter—

(1) "designated terminal" means the home or away-from-home terminal for the assignment of a particular crew.

(2) "dispatching service employee" means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

(3) "employee" means a dispatching service employee, a signal employee, or a train employee.

(4) "signal employee" means an individual employed by a railroad carrier who is engaged in installing, repairing, or maintaining signal systems.

(5) "train employee" means an individual engaged in or connected with the movement of a train, including a hostler.

§ 21102. Nonapplication and exemption

(a) GENERAL.—This chapter does not apply to a situation involving any of the following:

(1) a casualty.

(2) an unavoidable accident.

(3) an act of God.

(4) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the em-ployee left a terminal.

(b) EXEMPTION.—The Secretary of Transporta-tion may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

§ 21103. Limitations on duty hours of train employees

(a) GENERAL.—Except as provided in sub-section (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time the employee is engaged in or connected with the movement of a train is time on duty.

(3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

(5) An interim period available for rest at a place other than a designated terminal is time on duty.

(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(A) a casualty.

(B) a track obstruction.

(C) an act of God.

(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) EMERGENCIES.—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

§ 21104. Limitations on duty hours of signal employees

(a) GENERAL.—(1) In paragraph (2)(C) of this subsection, "24-hour period" means the period beginning when a signal employee reports for duty immediately after 8 consecutive hours off duty or, when required under paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

(2) Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee to remain or go on duty—

(A) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours;

(B) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

(C) after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)-(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period of more than one hour is time off duty and does break the continuity of service.

(c) EMERGENCIES.—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service.

§ 21105. Limitations on duty hours of dispatching service employees

(a) APPLICATION.—This section applies, rather than section 21103 or 21104 of this title, to a train employee or signal employee during any period of time the employee is performing duties of a dispatching service employee.

(b) GENERAL.—Except as provided in subsection (d) of this section, a dispatching service employee may not be required or allowed to remain or go on duty for more than—

(1) a total of 9 hours during a 24-hour period in a tower, office, station, or place at which at least 2 shifts are employed; or

(2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which only one shift is employed.

(c) DETERMINING TIME ON DUTY.—Under subsection (b) of this section, time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is on duty in a tower, office, station, or other place is time on duty in that tower, office, station, or place.

(d) EMERGENCIES.—When an emergency ex-ists, a dispatching service employee may be allowed to remain or go on duty for not more than 4 additional hours during a period of 24 consecutive hours for not more than 3 days during a period of 7 consecutive days.

§ 21106. Limitations on employee sleeping quarters

A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary and give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

§ 21107. Maximum duty hours and subjects of collective bargaining

The number of hours established by this chapter that an employee may be required or allowed to be on duty is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad carrier and its employees.

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CHAPTER 213—PENALTIES

SUBCHAPTER I—CIVIL PENALTIES

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§ 21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least $500 but not more than $10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $20,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an

individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.